

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 970 OF 2003.

The New India Assurance Co.Ltd. ... Appellant.
Versus.
Smt.Geeta Appasaheb Patil & others. ... Respondents.

Shri Bidan Chandran i/by Ms.Singhanian & Co.for the
Appellant.

Shri Rahul Kadam i/by Shri Uday Warunjikar for the
Respondents Nos.2 and 3.

CORAM : ABHAY S.OKA, J.

DATED : 18th January, 2007.

P.C.:

1. Heard the Advocate for the Appellant. The Appeal is by the Appellant-Insurance Company for challenging the Judgment and Award dated 24th January 2003 in a claim application under section 166 of the Motor Vehicles Act, 1988. It is not in dispute that leave under section 170 of the said Act of 1988 was not applied for by the Applicant. Moreover, no defence which is covered by section 149(2) of the said Act of 1988 was raised before the Tribunal and therefore, the said ground is not available to the Appellant in this Appeal.

2. In view of the decision of the Apex Court in the case of National Insurance Co.Ltd. v/s. Nicolledda Rahtagi and others [(2002) 7 SCC page 456], an appeal at the instance of the Insurer is not maintainable. The Appeal is therefore dismissed only on the said ground.

The Appellant will be entitled to the refund of Rs.25,000/- deposited in this Court. The Appellant will also be entitled to the refund of Court fee, if any, in accordance with the rule.

Judge.